

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Rural Cellular Association/CTIA Joint</b>	)	<b>CC Docket No. 94-102</b>
<b>Petition for Suspension or Waiver of the</b>	)	
<b>Rule Section 20.18(g)(1)(v) December 31,</b>	)	<b>WT Docket No. 05-288</b>
<b>2005 95 Percent ALI-Capable Handset</b>	)	
<b>Penetration Requirement</b>	)	

**To: The Commission**

**REPLY COMMENTS**

Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless ("Five Star"), by its attorney and pursuant to the Commission's Public Notice, Report No. DA 05-2678, released October 7, 2005, hereby submits its reply comments in the captioned proceeding. In support hereof, the following is shown:

**Statement of Interest**

1. Five Star is the licensee of Cellular Radiotelephone Service Station KNKN691, the Frequency Block B cellular system serving the B2 Segment of the Texas 15 – Concho RSA. Five Star has elected to deploy a handset-based E-911 Phase II solution; and will be unable to meet the Rule Section 20.18(g)(1)(v) requirement that 95 percent of all handsets on the system be Automatic Location Information ("ALI") capable by December 31, 2005. Accordingly, Five Star has an interest in the Commission's disposition of the issues presented in this proceeding.

**The Commission Should Suspend the Requirement**

2. In this proceeding, the Commission has solicited public comments and reply comments on the June 30, 2005 "Joint Petition for Suspension or Waiver of the Location-

Capable Handset Penetration Deadline” (“Joint Petition”) filed by the Rural Cellular Association and CTIA. The Joint Petition addresses the requirement codified in Section 20.18(g)(1)(v) of the Rules that, for carriers electing to deploy a handset-based E-911 solution, ninety-five percent of all handsets on the system be ALI-capable by December 31, 2005. The Joint Petition requests that the Commission grant blanket relief (in the form of a rule suspension) to all carriers whose ALI-capable handset activations meet the 100% requirement contained in Rule Section 20.18(g)(1)(iv); or, in the alternative, adopt a set of non-exclusive interpretive guidelines to assist carriers seeking a temporary waiver of the requirement. The guidelines would be non-exclusive because, as stated in the Joint Petition, “[c]arriers should not, however, be precluded from making their own showings that unique circumstances beyond their control justify an extension of time to satisfy the handset penetration requirement.”<sup>1</sup>

3. According to the Joint Petition, the relief requested is warranted because: a) customers are refusing to replace their high-power, 3 watt, analog subscriber equipment with the newer (*i.e.*, lower power) ALI-capable handsets; b) with comparatively few exceptions, Public Safety Answering Points (“PSAPs”) are not yet Phase II ready, so customers do not see a need to purchase the more expensive ALI-capable handsets at this time; c) customer churn rates are lower than anticipated by the Commission and the industry when the Rule Section 20.18(g)(1)(v) requirement was promulgated; and d) customers do not want to upgrade to more complex handsets because they see their existing models as adequate for their needs.<sup>2</sup> The common theme is that customers (for whatever reason) simply refuse to replace their existing handsets with ALI-capable ones.

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<sup>1</sup> Joint Petition, Pg. 11 n. 22.

<sup>2</sup> Joint Petition, pp. 2 – 7.

4. Both the National Telecommunications Cooperative Association and all of the wireless carriers submitting comments in response to the Public Notice support grant of the Joint Petition.<sup>3</sup> Of even greater significance, the Joint Petition has earned the support of the National Association of Regulatory Utility Commissioners and of the South Dakota Public Utilities Commission.<sup>4</sup> Two organizations representing PSAP interests, the National Emergency Number Association (“NENA”) and the Association of Public-Safety Communications Officials-International, Inc. (“APCO”), oppose a blanket suspension of the requirement, but are more receptive to the notion of issuing guidelines to assist in resolving individual waiver requests.<sup>5</sup>

5. Five Star submits that the Joint Petition and the supporting Comments make a compelling case for a blanket suspension of the December 31, 2005 ninety-five percent handset penetration requirement. All agree that the inability to meet the deadline rests with the decisions made by the individual customers themselves (not by the carriers) – for whatever reason, customers desire to retain their existing handsets and are not interested at this time in obtaining ALI-capable ones; and Five Star respectfully submits that customers have every right to make this decision for themselves. Given these circumstances, requiring the filing and evaluation of individualized waiver requests appears to be an improvident waste of scarce Commission and carrier resources because the basic reason in support of the waiver requests will be the same – *i.e.*, the voluntary decisions of the individual customers to retain their existing handsets, and the inability of

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<sup>3</sup> See Comments of National Telecommunications Cooperative Association; SouthernLINC Wireless; Comments of United States Cellular Corporation; Comments of Nextel Partners, Inc.; Comments of the NTELOS Companies; and Comments of ACS Wireless, Inc.

<sup>4</sup> See Comments of the National Association of Regulatory Utility Commissioners and Comments of the South Dakota Public Utilities Commission.

<sup>5</sup> See Comments of NENA, pp. 1, 4-6; Comments of APCO, pp. 2-5.

the carriers to compel their customers to do what the customers simply do not want to do. Thus, in each case, the grant of a waiver will be warranted because the inability of the carrier to achieve compliance will be due to circumstances beyond the carrier's control.

**In The Alternative, Rule Section 20.18(g)(1)(v) Should Be Repealed**

6. In the alternative, Five Star submits that the Commission either should deem the Joint Petition to be a petition for rulemaking, or act on its own motion under Section 1.412(c) of the Rules,<sup>6</sup> and simply repeal Rule Section 20.18(g)(1)(v). The showings contained in both the Joint Petition and in the Comments provide good cause in the form of a more than adequate factual record upon which to base a repeal of the regulation.

7. Five Star respectfully submits that the public interest would not be prejudiced by repeal of the 95 percent penetration requirement (especially in view of the fact that the requirement codified in Rule Section 20.18(g)(1)(iv) that 100 percent of all new handset activations be ALI-capable would remain in full force and effect). In this regard, it should be emphasized that no Commission regulation requires ALI-capable handset penetration levels to ever reach 100 percent. Under the regulations, a 95 percent penetration level is adequate. Stated another way, the regulation already allows up to five percent of a carrier's customer base to retain (for whatever reasons the customers choose) non-ALI-capable handsets in perpetuity, and such action on the customers' part is not deemed to conflict with the Commission's E-911 policies. There is no valid reason why a larger percentage of customers should not similarly be allowed to make the exact same

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<sup>6</sup> Rule Section 1.412(c) states that "[r]ule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impractical, unnecessary, or contrary to the public interest. The finding of good cause and a statement of the basis for that finding are in such situations published with the rule changes."

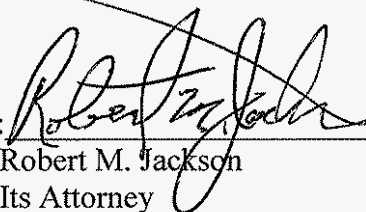
election. Indeed, continuing to limit that choice to five percent of the customer base would be arbitrary and capricious action on the Commission's part.

**WHEREFORE**, Five Star requests the Commission to grant a blanket suspension of the Rule Section 20.18(g)(1)(v) requirements; or, in the alternative, to repeal the regulation.

Respectfully submitted,

**Texas RSA 15B2 Limited  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that on October 31, 2005 I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing "**Reply Comments**" to the following:

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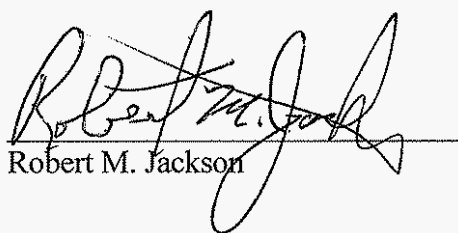
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